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IN THE

Supreme Court of the United States

October Term, 1964

No. [redacted] 7

THE HANNA MINING COMPANY, NATIONAL STEEL CORPORATION, HANSAND STEAMSHIP CORPORATION, and THE HANNA FURNACE CORPORATION,

Petitioners,

VS.

DISTRICT 2, MARINE ENGINEERS BENEFICIAL ASSOCIATON, AFL-CIO, an unincorporated association, RAYMOND T. MCKAY, its President, MELVIN H. PELFREY, Secretary-Treasurer, CHARLES E. LAPORTE, Vice-President, FRANK LECKIE, Field Representative, and JOHN DOE and RICHARD ROE, and other individuals whose names are unknown, pickets at Great Northern Railway Company Ore Docks, Superior, Wisconsin,

Respondents.

ON PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF WISCONSIN

RESPONSE BY RESPONDENTS TO MEMORANDUM FOR UNITED STATES

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October Term, 1964

No. 527

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Petitioners,

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Statement

The Solicitor-General agrees that the General Counsel of the National Labor Relations Board had no opportunity to evaluate the 1963 picketing in Superior, which forms the basis for the present suit, because Hanna did not file an

8(b)(4)(B) charge with regard to that picketing. Accordingly, the 1963 picketing "arguably" contained secondary elements which the Board could reach under 8(b)(4)(B). (Memorandum for United States, p. 13.)

The Solicitor-General then suggests that because of the "hybrid" nature of the picketing, the primary and secondary aspects of that picketing may be split into separate parts and that jurisdiction of the primary (organizational) picketing should be allocated to the state and that the secondary aspects of the same picketing is reachable by the Board under Section 8(b)(4)(B).

Discussion

1. The situation here is almost identical with that in *Marine Engineers Beneficial Association* v. *Interlake Steamship Co.*, 370 U. S. 173 (1962). The Union involved in *Interlake* is the Union here involved. The complaint in *Interlake*, the findings and opinion of the state circuit court and the opinion of the Supreme Court of the State of Minnesota clearly show that the picketing there, as here, involved organizational as well as secondary aspects. The only other factor present in *Interlake* (not relevant here to the position of the Solicitor-General) was the questioned assumption of jurisdiction by the state court to determine whether the Union was a "labor organization" within the meaning of the National Labor Relations Act. This Court, having determined that the *Interlake* picketing involved secondary aspects and that the Union was "arguably" a "labor organization," both jurisdictional aspects of Section 8(b)(4)(B) of the Act, reversed the judgment of the state courts which had enjoined the picketing.*

The effect of the Solicitor-General's position is to require the Court to reverse *Interlake*, which was decided less than three years ago.

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* It is not here disputed that the respondent Union is a "labor organization" within the meaning of the Act.

The two cases cited by the Solicitor-General in support of his position are inapposite. *Youngdahl* v. *Rainfair*, 355 U. S. 131 (1957) holds that the state court has jurisdiction to enjoin violent conduct, but not peaceful picketing, an area which is the "preempted 'domain' of the NLRB." In the instant case, it is the peaceful picketing itself, the heart of the very activity involved in both organizational and secondary conduct, which the Solicitor-General suggests may be enjoined by the state court. It might also be noted that *Youngdahl* v. *Rainfair* was decided by this Court before *Interlake*. In *Incres Steamship Co.* v. *International Maritime Workers Union*, 372 U. S. 24, 27 (1963), also cited by the Solicitor General, this Court held:

> "• • • [M]aritime operations of foreign-flag ships employing alien seamen are not in 'commerce' within the meaning of § 2(6), 29 U. S. C. § 152(6)."

Under the circumstances of that case there was no longer *any* dispute "arguably" within the jurisdiction of the Board. In the case at bar the picketing in Superior, Wisconsin, which was the object of the state court action, arguably contains secondary elements which the Board could reach under 8(b)(4)(B).

2. Neither *Interlake* nor the decision of the Wisconsin state court here deprive the state of all jurisdiction to regulate primary picketing where the object of the activity is to organize or compel recognition of the Union as the representative of supervisory personnel. The state may well have jurisdiction in respect to such picketing where the picketing is not arguably prohibited under Section 8(b) of the Act. The question to be determined in such situation will be whether Section 14(a) of the Act permits exercise of state jurisdiction or whether it was the intent of Congress in adopting 14(a) to occupy this field * and leave it "to the free play of economic forces". (See Memorandum

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* Cf. *Teamsters* v. *Morton*, 377 U. S. 252 (1964).

for the United States, p. 7.) The case now before this Court does not present that question. The picketing here admittedly involves secondary aspects arguably prohibited by Second 8(b)(4)(B) and is reachable by the Board. State jurisdiction cannot therefore be asserted as to the same picketing, though it may also involve non-secondary aspects.

CONCLUSION

For the foregoing reasons and for the reasons set forth in respondents' brief in opposition, the petition for a writ of certiorari should be denied.

Respectfully submitted,

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